

NTSB Order No. EM-192

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 24th day of January, 2002

Appellant.

Docket ME-169

Appellant, *pro se*, seeks review of a decision of the Vice Commandant (Appeal No. 2618, dated April 27, 2000) affirming a decision entered by Coast Guard Chief Administrative Law Judge Joseph N. Ingolia on July 18, 1997, following a hearing on June 17, 1997.¹ The law judge sustained charges of misconduct, violation of regulation, and violation of law on allegations that

¹Copies of the decisions of the Vice Commandant (acting by delegation) and the law judge are attached. The Coast Guard did not file a response to the appeal.

2

the appellant, while serving under the authority of his master's license, had operated the M/V LRS RENAISSANCE on a for-hire trip on May 5, 1997, when, among other things, it did not have a valid certificate of inspection.² He therefore ordered that appellant's Merchant Mariner's License (No. 764165), and all other Coast Guard issued licenses and documents held by him, be suspended outright for one month with four additional months' suspension remitted on sixteen months' probation. As we find no error in the Vice Commandant's affirmance of the law judge's decision, we will deny the appeal.³

It is not entirely clear from Appellant's contentions on appeal here whether he actually contests the Coast Guard's conclusion that the May 5 voyage was a for-hire operation⁴ or that he simply believes that the Coast Guard's charges should be dismissed because it, in his view, failed to provide him with sufficient guidance on how to operate the vessel with passengers aboard as a free cruise. In any event, aside from demonstrating

²The alleged lack of a certificate of inspection for the vessel underlay the misconduct charge. Failure to observe requirements on pre-trip passenger safety briefings and the reporting of marine casualties fell under the violation of regulation allegation. The violation of law infraction was based on appellant's alleged failure to have his mariner's license posted on the vessel in a conspicuous location.

³Appellant's request for oral argument is denied. The existing record provides an adequate basis for resolving the issues his appeal raises.

⁴It is clear that the appellant did not challenge the "for-hire" determination on his appeal to the Vice Commandant. In the absence of good cause to excuse the failure to raise such an objection on appeal from the law judge's order, we will not independently review the issue.

his disagreement with the judgment that any charges against him should be sustained, he has not identified any basis for finding that the law judge incorrectly weighed, or misunderstood, the documentary evidence abundantly supporting the for-hire determination, or that his related credibility assessments should be overturned.

We see no necessity to attempt to determine whether the Coast Guard, consistent with the Small Business Regulatory Enforcement Fairness Act of 1996, properly discharged its obligation to provide appellant's company (Captain Sinn's Dock) with the guidance it needed to remain within the various maritime laws that applied to the kind of operations in which appellant wanted to engage. In the first place, appellant has not demonstrated error in the Vice Commandant's conclusion that the SBREA does not relieve him or his company of responsibilities imposed by other federal laws and regulations. In the second place, given the conclusion of the law judge, affirmed by the Vice Commandant, that appellant had not intended that the May 5, 1997 voyage be operated as a free cruise, the question of Coast Guard's compliance with the SBREA is simply not relevant.⁵

ACCORDINGLY, IT IS ORDERED THAT:

1. The appellant's appeal is denied; and
2. The decision of the Vice Commandant affirming the decision and order of the law judge is affirmed.

⁵From the record, it would appear that the Coast Guard was trying to facilitate appellant's ability to operate an un-inspected vessel at the time of the subject voyage, but appellant was not pleased with the pace of the Coast Guard's efforts.

BLAKEY, Chairman, CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES OF AMERICA	:	
UNITED STATES COAST GUARD	:	
	:	DECISION OF THE
vs.	:	
	:	VICE COMMANDANT
LICENSE NO. 764165	:	
	:	ON APPEAL
	:	
	:	NO. 2618
<u>Issued to: Ronald G. Sinn</u>	:	

This appeal is taken in accordance with 46 U.S.C. § 7702 and 46 C.F.R. § 5.701.

By an order dated July 18, 1997, a United States Coast Guard Administrative Law Judge at Baltimore, Maryland, suspended Appellant's Merchant Mariner's License for one month, with four additional months suspended on sixteen months probation.

Appellant was charged with *misconduct*, *violation of regulation* and *violation of law*. The *misconduct* charge was supported by one specification: Appellant wrongfully operated the M/V LRS RENAISSANCE in the vicinity of Cape May Harbor without a valid Certificate of Inspection while carrying more than six passengers for hire. The *violation of regulation* charge was supported by two specifications: first, Appellant failed to provide the required passenger safety orientation before the M/V LRS RENAISSANCE got underway with more than six passengers for hire in violation of 46 C.F.R. § 185.506; and, second, Appellant failed to provide a written report of marine casualty in violation of 46 C.F.R. § 4.05-10. The *violation of law charge* was supported by one specification: Appellant failed to have his Merchant Mariner's License posted in a conspicuous place in violation of 46 U.S.C. § 7110.

The hearing was held on June 17, 1997, at Philadelphia, Pennsylvania. Appellant represented himself and entered a response denying each charge and specification. The Coast Guard Investigating Officer introduced into evidence the testimony of nine witnesses and eight exhibits. Appellant introduced into evidence the testimony of one witness and testified under oath on his own behalf. He introduced two exhibits into

evidence. All charges and specifications were found *proved*. Appellant's License was suspended for one month, with four additional months suspended on sixteen months probation.

The Administrative Law Judge's Decision and Order was served on Appellant on July 24, 1997. Appellant filed a notice of appeal with the Administrative Law Judge on August 22, 1997. Appellant received a copy of the transcript on October 22, 1997, and requested an extension of time to submit his appeal. The Administrative Law Judge granted Appellant's request for an extension of time until December 20, 1997. Although the Appellant did not perfect this appeal until December 29, 1997, I will consider the appeal as if it were perfected in a timely manner. Therefore, the appeal is properly before me for review.

APPEARANCE: Appellant appeared *pro se*. The United States Coast Guard Investigating Officer was Lieutenant Mark R. Hindle, USCG.

FINDINGS OF FACT

Appellant served under the authority of his License as master aboard the M/V LRS RENAISSANCE at all times relevant. Appellant owns and operates the vessel and a charter business known as Captain Sinn's Dock. On May 5, 1997, Appellant operated the M/V LRS RENAISSANCE during a voyage near Cape May Harbor with approximately 150 passengers aboard. The passengers were comprised of tour groups from Atlas Travel and White Star tours. As part of their tour package, the passengers were entitled to a cruise aboard the M/V LRS RENAISSANCE with dinner and music.

Prior to the actual voyage, Atlas Travel had arranged the trip for twenty passengers through Atlas Inn Beach Resort. Atlas Travel charged twenty travelers under a tour package and paid Atlas Inn Beach Resort \$438.90 for the tour package. In turn, Atlas Inn Beach Resort arranged the trip with Appellant's company, Captain Sinn's Dock, and agreed to pay \$20.00 for each passenger. Under their normal arrangement, Atlas Inn Beach Resort would pay Captain Sinn's Dock at the completion of the voyage.

Prior to the vessel getting underway on May 5, 1997, none of the passengers were told that the trip would be free.

On May 5, 1997, after the M/V LRS RENAISSANCE commenced its voyage, the Coast Guard learned that the vessel was being operated without a valid Certificate of Inspection. The Coast Guard also discovered that a passenger on board the vessel had been injured during the transit. The Coast Guard contacted the vessel and offered assistance but the Appellant stated that the vessel was returning to its dock and already called ahead for medical assistance. Subsequently, the Coast Guard met the vessel at its dock and went aboard to conduct a law enforcement boarding. The Coast Guard interviewed the Appellant and several passengers. Based on the boarding, the Coast Guard discovered the following: that the injured passenger had broken her hip and required more than first aid; Appellant operated the vessel without a valid Certificate of Inspection; Appellant failed to make a public safety announcement at anytime prior to or during the voyage; Appellant failed to maintain his License on board the vessel in a conspicuous location; and, passengers stated that when the Coast Guard arrived on scene, members of the crew told passengers that the cruise was free. Subsequent to the actual Coast Guard boarding, Appellant failed to submit a written report of the marine casualty that involved the injured passenger.

BASIS OF APPEAL

Appellant, acting *pro se*, filed a notice of appeal and brief. Appellant asserts that the Coast Guard had a duty under the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121, 11 Stat. 847) to advise him of the procedures and processes necessary to remain within the laws and regulations. Furthermore, Appellant contends that the one-month suspension ordered by the Administrative Law Judge was excessive because of the financial hardship imposed on the Appellant.

experienced mariner. [TR at 173] Furthermore, Appellant understood passenger vessel operations and the purpose of a certificate of inspection. He should have known that he was not in compliance with federal laws or regulations. [TR at 174, 179-181] Appellant is clearly accountable for his actions on May 5, 1997. As previously stated, the purpose of the Act is to assist small businesses meet their regulatory obligations and allow such entities to participate in the process. The Act does not relieve licensed mariners of their responsibility to comply with federal laws and regulations.

II.

Appellant asserts that the one-month suspension ordered by the Administrative Law Judge is excessive. Appellant further asserts that the order imposed an undue financial hardship on him due to lost revenue and bankruptcy. I disagree. The selection of an appropriate order is the responsibility of an Administrative Law Judge. See 46 C.F.R. § 5.569(a). The Administrative Law Judge has wide discretion as to the choice of an appropriate sanction. See Appeal Decisions 2543 (SHORT), 2609 (DOMANGUE). The Administrative Law Judge may look to the Suggested Range of an Appropriate Order found at Table 5.569 for information and guidance. An order imposed at the conclusion of a case will only be modified on appeal if that order is clearly excessive or an abuse of discretion. See Appeal Decisions 2245 (MATHISON), 2256 (BURKE), 2422 (GIBBONS), 2391 (STUMES), 2362 (ARNOLD), 2313 (STAPLES).

In the present case, the record reflects no abuse of discretion and the order is clearly not excessive. The Administrative Law Judge considered all the matters raised at the hearing in his selection of an appropriate order. [Decision and Order (D&O) at 17-18] In particular, he considered that Appellant has no prior record; Appellant has been in the maritime industry since 1962; and the operation of passenger vessels is the Appellant's livelihood. [D&O at 17-18] The sanction imposed by the Administrative Law Judge is more lenient than the Table of Average Orders suggests. See 46 C.F.R. § 5.569 (Table). Furthermore, financial hardship is considered subservient to the remedial purpose of these proceedings to promote safety at sea. See Appeal Decisions 1515 (ALFONSO), 2524 (TAYLOR). In light of the serious nature of the charges and

specifications relating to vessel safety, any contention that the sanction is excessive is clearly without merit.

CONCLUSION

The findings of the Administrative Law Judge are supported on the record by substantial, reliable, and probative evidence. The hearing was conducted in accordance with applicable laws and regulations.

ORDER

The Decision and Order of the Administrative Law Judge dated July 17, 1997, is **AFFIRMED.**



J.C. CARD
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C. this 21st day of April, 2000.

UNITED STATES OF AMERICA

**DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD**

*****		Docket Number
UNITED STATES OF AMERICA	*	
UNITED STATES COAST GUARD	*	05-0063-JNI-97
v.	*	
Merchant Mariner's License	*	
No. 764165	*	
Issued to:	*	
Ronald G. Sinn	*	DECISION AND ORDER
	*	
Respondent	*	

APPEARANCES:

Lt. Mark Hindle

For the Coast Guard

Ronald G. Sinn

For the Respondent

BEFORE:

**Hon. Joseph N. Ingolia
Chief Administrative Law Judge**

Preliminary Statement

This suspension and revocation proceeding was instituted by the United States Coast Guard in discharge of its duty to promote the safety of life and property at sea. It was brought pursuant to the legal authority contained in 46 U.S.C. §7703 and the regulations promulgated thereunder and was conducted in accordance with the procedural requirements of 5 U.S.C. §§551-559 and Part 5 of Title 46 of the Code of Federal Regulations.

This proceeding was heard by the Hon. Joseph N. Ingolia on the 17th day of June, 1997 at the Coast Guard Marine Safety Office, 1 Washington Avenue, Philadelphia, PA.

After examining the charges and specifications, the Hon. Joseph N. Ingolia found them to be correct as to form and legal sufficiency:

FIRST CHARGE: MISCONDUCT

FIRST SPECIFICATION: In that you, acting under authority of the above captioned license, while serving as the Master of the M/V LRS RENAISSANCE O.N. 954300, did on or about 05 May 1997, wrongfully operate the M/V LRS RENAISSANCE in the vicinity of Cape May Harbor without a valid Certificate of Inspection while carrying more than six passengers for hire.

SECOND CHARGE: VIOLATION OF REGULATION

FIRST SPECIFICATION: In that you, acting under authority of the above captioned license, while serving as the Master of the M/V LRS RENAISSANCE O.N. 954300, did on or about 05 May 1997, fail to provide the required passenger safety orientation before the M/V LRS RENAISSANCE got underway with more than six passengers for hire in violation of 46 CFR 185.506.

SECOND SPECIFICATION: In that you, acting under authority of the above captioned license, while serving as the Master of the M/V LRS RENAISSANCE O.N. 954300, did fail to provide a written report of marine casualty for an injury that required medical treatment beyond first aid that was sustained by a passenger aboard the M/V LRS RENAISSANCE on 05 May 1997, in violation of 46 CFR 4.05-10.

THIRD CHARGE: VIOLATION OF LAW

FIRST SPECIFICATION: In that you, acting under authority of the above captioned license, while serving as the Master of the M/V LRS RENAISSANCE O.N. 954300, did on or about 05 May 1997, fail to have your Merchant Mariner's License posted in a conspicuous place on the M/V LRS RENAISSANCE while operating in the vicinity of Cape May Harbor with more than six passengers for hire, a violation of 46 USC 7110.

At the beginning of the hearing, the Respondent and the Chief Administrative Law Judge discussed the Respondent's right to have the proceeding continued if necessary. The Chief Administrative Law Judge stated that if the Respondent at any time during the

course of the hearing needed an additional week to prepare his defense to these charges and specifications, that a motion for a continuance by the Respondent would be granted.

The Chief Administrative Law Judge then advised the Respondent of his right to counsel, or any other representation he may so choose; the possible sanctions involved; the weight of the evidence needed to find a charge proven; the right to appeal and; the right to call witnesses and enter evidence into the record; the right of the Respondent to testify (with no adverse inference if the Respondent chose not to); and an explanation of the pleas the Respondent may enter as to each charge and specification. Respondent after hearing the charge as read by the Chief Judge entered a plea of "Deny" to the charges and specifications.

During the course of the hearing, the Administrative Law Judge heard eleven (11) witnesses and allowed ten (10) exhibits to be entered into evidence. After both sides rested and completed their closing arguments, the Chief Administrative Law Judge issued a decision on the merits of the hearing and found the Respondent liable for violation of the Charges and Specifications.

FINDINGS OF FACT

1. The Respondent is the owner and operator of the M/V LRS RENAISSANCE. (Tr. 24, 42, 60, 64, 94)
2. The Respondent is the owner of Captain Sinn's Dock. (Tr. 138).
3. The vessel carried nearly one hundred and fifty (150) passengers. (Tr. 39, 40, 57, 61, 69, 70, 181)
4. The M/V LRS RENAISSANCE is approximately 66 tons. I.O. Ex. 4

5. On May 5th, 1997, the Respondent failed to ensure any public announcements were made concerning safety equipment on the vessel and instructions on what to do if an emergency situation arose. (Tr. 70, 80, 119, 124, 125, 133)
6. On May 5th, 1997, the Respondent did not post his Merchant Mariner's License in a conspicuous place. (Tr. 47, 61)
7. On May 5th, 1997, the Respondent did not have a valid Certificate of Inspection for the M/V LRS RENAISSANCE. (Tr. 24, 52, 53, 140)
8. Upon seeing the arrival of the Coast Guard inspectors on May 5th, 1997, the crew told some passengers that this was a, "free trip." (Tr. 38, 81, 85, 117, 123)
9. A passenger while on board the vessel and while it was underway suffered a broken hip which required more than first aid medical treatment. (Tr. 38, 57, 58, 69, 80, 81)
10. The Respondent had not filed a casualty report as of the date of the hearing. (Tr. 51)
11. Food was provided to the passengers on board the RENASSIANCE by the Respondent. (Tr. 71, 91, 108, 119, 125)
12. A Band was on board to play for the passengers and they were compensated by the Respondent. (Tr. 71, 91, 119)
13. Atlas Inn Beach Resort signed a contract with Atlas Travel (Hanover) to book and pay for travelers to go aboard the Respondent's vessel through the Respondent's company, Captain Sinn's Dock. (Tr. 76, 97 - I.O. 5)
14. Atlas Travel (Hanover) charged twenty (20) travelers under a tour package to sail on Respondent's vessel and eat dinner for the 5 May 1997 trip. (Tr. 70, 71, 79, 80, 85, 86, 117, 123)
15. The vast majority of the remaining passengers were from White Star tours. (Tr. 154.)
16. Atlas Travel (Hanover) paid Atlas Inn Beach Resort \$438.90 for the tour package. (I.O. 6, 7 - Tr. 98, 99)
17. Atlas Inn Beach Resort booked passage aboard the LRS RENAISSANCE for twenty passengers from Hanover and agreed to pay \$20.00 apiece to the Respondent at the time of booking. (Tr. 98, 103, 106, 108)

18. Atlas Inn Beach Resort and the Respondent through his companies including Captain Sinn's Dock, have had numerous business dealings in the past in which Atlas Inn would pay the Respondent at the conclusion of the voyage. (Tr. 96, 100, 109, 138)
19. Atlas Inn Beach Resort and Captain Sinn's Dock, which is owned by the Respondent, do not use written contracts in their business dealings. (Tr. 138)
20. Neither Atlas Inn Beach Resort nor Atlas Travel (Hanover) were told by the Respondent that the trip would be for free prior to the vessel getting underway. (Tr. 83, 132, 151)
21. The Respondent did not notify Atlas Inn Beach Resort until the day after the trip, and after the Coast Guard had started to investigate the incident, that the trip was free. (Tr. 83, 99)
22. At no time prior to the incident in question was Atlas Inn Beach Resort notified that there might be a refund or a free trip for this voyage, and before and immediately after the voyage they had every intention of paying Captain Sinn's Dock for the voyage. (Tr. 82, 83, 99, 100)
23. Atlas Inn Beach Resort has never before received a refund from the Respondent where the vessel has made a trip and the passengers were aboard. (Tr. 110)
24. The Respondent shortly prior to the incident had filed for bankruptcy protection under Chapter 13. (Tr. 164).

Ultimate Findings of Fact and Conclusions of Law

1. The Respondent was acting under the authority of his Merchant Mariner's License Number 764165 as Master of the M/V LRS RENAISSANCE on 5 May 1997 in the vicinity of Cape May Harbor, at the time of the offenses in question.
2. More than six (6) passengers paid consideration to be aboard the M/V LRS RENAISSANCE on or about 5 May 1997.
3. Atlas Inn Beach Resort and the Respondent entered into a contractual arrangement.
4. The First Specification under the Charge of Misconduct is **PROVEN**.

5. The First Specification under the Charge of Violation of Regulation is **PROVEN**.
6. The Second Specification under the Charge of Violation of Regulation is **PROVEN**.
7. The First Specification under the Charge of Violation of Law is **PROVEN**.

Jurisdiction

Here, the burden is upon the Coast Guard to show that the Respondent, as required by 46 U.S.C. § 7703, was acting under the authority of his license. Under 46 U.S.C. § 7703(1)(A) the Secretary may suspend or revoke a license or document when the Merchant Mariner is acting under the authority of that License or Document and, "has violated or fails to comply with this subtitle, a regulation prescribed under this subtitle, or any other law or regulation intended to promote marine safety or to protect navigable waters." The Respondent has been charged with violations stemming from 46 CFR §185.506; 46 CFR §4.05-10; and 46 USC §7110. Under § 7703, therefore, violations of regulations prescribed by the Secretary, which include those regulations found in Chapter 46 of the Code of Federal Regulations, may be charged as Violations of Regulation. See 46 CFR § 5.33. Violating 46 U.S.C. § 7110, a law which is intended to promote safety at sea, is a chargeable offense under Violation of Law. See 46 CFR §5.33. Finally, 46 U.S.C. § 7703 (1)(B) provides that a license may be suspended or revoked if the holder, "when acting under the authority of that license has committed an act of incompetence, misconduct or negligence."

A person serves under the authority of a license or document when the license or document is either required by law or regulation or is required in fact as a condition of employment. *Appeal Decision No. 2371 (MCFATE)*; 46 C.F.R. § 5.57. Under 46 U.S.C. § 8902 a "small passenger vessel shall be operated by an individual licensed by the Secretary to operate that type of vessel in the particular geographic area..." . A small passenger vessel is defined as a vessel under 46 U.S.C. § 2101(35)(A) which is less than 100 gross tons, and has at least six passengers on board, including one passenger for hire. The Respondent, as Master of the M/V LRS RENAISSANCE, therefore, was clearly acting under the authority of his license while operating the vessel on 5 May 1997.

Misconduct

Misconduct is defined as, "human behavior which violates some formal, duly established rule. Such rules are found in, among other places, statutes, regulations, the common law, the general maritime law, a ship's regulation or order, or shipping articles and similar sources." 46 C.F.R. § 5.27. Here, the Charge of Misconduct is principally based on a violation of 46 U.S.C. § 3311 which states, "... a vessel subject to inspection under this part may not be operated without having on board a certificate of inspection ...". Under 46 U.S.C. § 3301 a 'small passenger vessel' is subject to inspection and thus falls under 46 U.S.C. § 3311. A 'small passenger vessel' is statutorily defined as any vessel less than 100 gross tons in weight carrying more than six (6) passengers for hire. *See* 46 U.S.C. § 2101(35)(A). A passenger for hire is defined as "a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an

interest in the vessel." 46 U.S.C. §2101(21a). In order to prove the charge of misconduct, therefore, the Coast Guard must show that the vessel was less than 100 gross tons; that it carried more than six passengers for hire; and that there was no valid certificate of inspection.

It was not disputed at the hearing that the vessel was less than 100 gross tons, or that there was no valid Certificate of Inspection, thus, most of our analysis will concentrate on determining whether or not there were at least six (6) passengers for hire. According to all the witnesses, including the Respondent, (Tr. 181) there were approximately 150 passengers aboard while the vessel was in Cape May Harbor. Of those, the testimony indicates that twenty (20) passengers had paid Atlas Travel (Hanover) \$360.00 each for a tour package which included passage aboard the LRS RENIASSANCE. Ms. Lane, the motor coach director and director of cruise sales for Atlas Tours (Hanover) testified as follows:.

Question from Lt. Hindle: Ms. Lane, I just wanted to confirm what you stated earlier in your testimony that at the \$360 per person that was provided from your people in your group?

Answer: Yes (Transcript at 85). (See Also Tr. 70, 71, 79, 80, 85, 86, 117, 123)

In turn Atlas Travel (Hanover) paid to Atlas Inn Beach Resort \$438.90 for its clients to travel on the LRS RENIASSANCE. Ms. Pagano, the director of marketing for Atlas Inn Beach Resort, testified:

Question from Lt. Hindle: Approximately, how much money was collected from Hanover tours and travel to cover the cost of the cruise?

Answer: Well, we had a calculation of an allowance in the package of approximately \$438.90. (Transcript at 98.)

The Respondent contends that he never intended to collect any money for this trip from either Atlas Tours (Hanover) or the other tour group White Star. (Tr. 165, 172, 183). This he asserts is evidenced from the actions he took before and during the voyage. (Tr. 142, 172, 173) The facts, however, seem to indicate otherwise. It is clear from the record that at least the Atlas Tour group was not told prior to the departure that the trip was "free". (Tr. 135) Louise Sinn, the Respondent's wife, testified:

Question : Let's focus on what you said to Atlas. Before the vessel left the dock, you did not tell anyone from Atlas, Ms. Lane, or anyone else the vessel was for free?

Answer: I did not say anything, no. (Transcript at 135)

Further in the Record the Respondent states:

Question from the Court: Verify an answer to one question for me. Did you or did you not advise the passengers or tell the crew to advise the passengers before the trip, and what were the facts relating to that that it was free? Was that done or not done?

Answer: I directed my wife to do that. I wanted her to contact the tour group operators and tell them it was a free trip. (Transcript at 172)

Moreover, the Respondent stated that prior to leaving the dock he made a public statement before the vessel departed that the trip was 'free' to anyone who wanted to come aboard.(Tr. 173). He produced no other evidence or witnesses to support the bare assertion that this event actually occurred. (This even though he asserted that crew members were present during this announcement. See Tr. 173). Finally, the Respondent's wife testified that at no time prior to the vessel departing did anyone make a statement telling the passengers that the trip was free. She states:

Question from the Court: --- No, but he --- my question is, he did tell them ahead of time?(Tr. 151.)

Answer: Ron? Did Ron tell them ahead of time?

The Court: Yes, yes.

Answer: No, Ron didn't tell anybody ahead of time. The crew you mean? The crew members?

The Court: No.

Answer: Or the passengers?

The Court: Am I right or wrong in before the trip took place --

Answer: Uh-huh

The Court: ---- this evening----

Answer: Uh-huh -- --

The Court: -- did anybody indicate to the passengers that it would be for free?

Answer: To my knowledge, no.

Finally, several witnesses came forward and testified that the crew aboard the LRS RENIASSANCE, upon seeing the approaching Coast Guard vessel, began to tell passengers aboard that the trip was free. Passenger Lane testified:

Question: And I just wanted to confirm that what you said, as far as when the crew saw the Coast Guard, that they advised you if anybody asked, the cruise was for free?

Answer: Yes. The crew said that if anyone asked us the trip was free.
(Transcript at 85)

Further in the record passenger Dvorak testified:

Question: Did the crew say anything to you during the dinner cruise?

Answer: The one thing that I remember that one of the crewmen said to us was after Mrs. Woods was hurt and all, we were headed back to the dock, and we were told by this crewman who stood at the end of our table that the Coast Guard

would be boarding the boat, that we would have to stay on and, the first thing they were going to ask us was did we pay for the cruise.

And he looked at us and he said something to the effect, and I don't know the exact words, but something to the effect of no, you didn't pay for it, it was all free. And we looked at each other and kind of laughed because we thought he was being sarcastic because of course we knew we had paid for the trip. (Transcript at 118)

Given the above it is clear to the undersigned that there was no original intent to have a cruise free of charge complete with meals, a band, etc... Rather, it is apparent that the passengers were told the trip was free after the Coast Guard approached the vessel in order to obviate the violation which had already occurred. Such conduct cannot be condoned.

Having found that there was never a free trip intended, we must examine in greater detail whether or not consideration passed from the passengers to the Respondent who owns and operates the LRS RENAISSANCE. According to the record in this proceeding it is clear that the passengers from the Atlas Tour paid for the cruise under a package arrangement with their tour group. Approximately twenty (20) paid Atlas Tours (Hanover), which in turn paid Atlas Inn Beach Resort, for the cost of the trip aboard the Respondent's vessel. Atlas Inn Beach Resort, however, did not directly pay the Respondent for the voyage prior to its departure. This was characteristic of their general business practice they had with Respondent's company Captain Sinn's Dock. They also did not sign a written contract providing for payment, which is also their general business practice. Ms. Pagano testified:

Question: On the evening of May 5th, did you expect to be refunding Hanover Travel for the cruise?

Answer: No, I did not.

Question: And why not?

Answer: Well, I didn't expect that there would be any change from the normal procedure, that, you know, that we would be billed after the fact like normal, pay for it, and there was no idea in my mind that I would be refunding. (Transcript at 99)

Further in the record,

Question of the Court: Okay. How many --- how many cruises have you been involved with that Captain Sinn has been involved with? How many times have you used his services?

(After a few questions and comments from the Court to the witness and vice versa the witness said)

Answer: Oh, ~~no~~ Many, many times. I would say at least ten times a year at least. (Transcript at 108)

Further in the record Mrs. Sinn testified:

Question: And would you agree that her testimony that on the arrangements that she makes with you, there typically is not a written contract. That she calls you up and says, I need to book a group of 20 on the vessel, can you arrange it. Is that --

Answer: What I do, procedure-wise with all my groups, is that when I receive a phone call from a group, I will print out an invoice, and that is the confirmation of the reservation. We did not do that with Gwenne.

Question: You heard Ms. Pagano testify that that wasn't done every trip?

Answer: That's correct.

Question: Okay

Answer: That's correct. Because---

Question: I'm just asking---

Answer: ---the reason, and I'll tell you what the reason is, is because there are two companies involved, one of which is run by my husband and myself. The other business is run by his mother and himself. And his mother does not do that. As you can see with Captain Sinn's Dock, that's one of her invoices, and she typically

does not do that. I do that as a rule for myself for my own administration.
(Transcript at 137)

It is clear that a contract was entered into between Atlas Inn Beach Resort and the Respondent's company.¹ Under New Jersey state law a contract is formed where there is an offer and acceptance and the performance of each party can be reasonably ascertained. Weichert Co. Realtors v. Ryan, 128 N.J. 427; 608 A.2d 280 (NJ 1992). Moreover, "if the parties agree on essential terms and manifest an intention to be bound by those terms, they have created an enforceable contract." *Id.* It is the testimony of those involved that the essential elements of the contract such as time and place of performance, method of performance and cost were all agreed to in advance by the parties. Ms. Pagano testified:

Question: I just wanted to confirm from your testimony of which you had said you did - is it true that you stated there was a verbal agreement as far as the passengers to be carried on board the LRS Renaissance on the 5th of May with Mr. Sinn or Mrs. Sinn?

Answer: Well, yes. I called up by telephone and made a reservation, verbally.

Question: And your understanding was it was \$20 a head for the carriage of those people?

Answer: Approximately, yes. (Transcript at 103)

Further in the record,

Question of the Court: All right. Well, my question is focused on the cruise.

Answer: Well, what I expected from the cruise was a dolphin watch cruise with a buffet dinner.

Question of the Court: Okay. So that included the transportation and the dinner; is that correct?

¹ Under the New Jersey Statute of Frauds which can be found at N.J. Stat @ 25:1-12, there is no statutory language which would require this contract to be written.

Answer. Transportation, a sight-seeing cruise and dinner. (Transcript at 108)

The Respondent, in fact, performed his end of the contract by taking the passengers out on May 5 1997 for a dinner and cruise. Therefore, it is conclusive that a verbal contract did exist at the time of this voyage between Atlas Inn Beach Resort and the Respondent's company, Captain Sinn's Dock.

The next issue is whether or not consideration from the passengers passed directly or indirectly to the Respondent. Under 46 U.S.C. §2101(5a) consideration means economic benefit, inducement, right or profit. Consideration is, therefore, not limited to money. To be a 'passenger for hire' consideration must be contributed as a condition of carriage on the vessel, either directly or indirectly to the owner, operator, charterer, agent or anyone else having an interest in the boat. Moreover, such terms have been traditionally construed in a liberal manner because these are safety regulations and are remedial in nature. Rowe v. United States Fidelity and Guaranty Corp. 375 F.2d 215, 219(4th Cir. 1967). Here, it is clear that such consideration came in two forms.

First, it is clear from the record that the Respondent by fulfilling his terms under the contract the Respondent would have been able to seek payment from the tour lines for carrying the passengers aboard the LRS RENAISSANCE, or if they refused to pay, sought payment on a breach of contract claim. His voluntarily action to not accept the money because he was caught by the Coast Guard does not somehow negate the existence of the underlying contract and, therefore, does not negate the actual consideration contributed for the benefit of these passengers to be onboard the LRS RENAISSANCE. Therefore, consideration did pass indirectly to the Respondent when he gained a legal

right to demand payment from the tour groups or seek damages for breach of contract in a New Jersey court.

The second form of consideration, or economic benefit, occurred aside from the monetary gain the Respondent was entitled to. The Respondent testified that he also took these passengers out because he wanted to keep a strong business relationship and possibly secure future bookings from these tour groups. (Tr. 183). Therefore, it is clear that this perceived economic benefit of future business similarly induced him to go forward with this trip. As such, consideration for passage aboard this vessel, for these passengers, passed directly or indirectly to him upon getting underway. Therefore, at least twenty, if not all these passengers who were a part of these tour groups were "passengers for hire".

After the above analysis it becomes clear that at least twenty (20) passengers for hire were aboard the LRS RENAISSANCE while it did not have a valid certificate of inspection. 46 U.S.C. § 3311 and the rules thereunder, require the Respondent to have a certificate of inspection where there are more than six (6) passengers for hire and the ship is less than 100 gross tons. Since the Coast Guard has shown all of these elements to be present the specification under the charge of Misconduct is **proven**.

Violation of Regulation

Under the First Specification the Respondent was charged with failing to provide for a safety orientation in violation of 46 CFR 185.506. A master is under an obligation to ensure that a public service address is given which informs his passengers of safety concerns such as: donning a life jacket during hazardous conditions, the location of emergency exits and life rafts, the stowage location of the life jackets, etc... It was the

testimony of several witnesses including the Respondent's wife that this was never done.

She testified:

Question: Did you do a safety brief on this trip?

Answer: This trip did not have one. I wasn't really paying attention, but I realized afterwards, you know, when somebody asked me, did we do the orientation, somebody said it didn't happen, I realized that it probably didn't happen.
(Transcript at 133)

Therefore, it is clear that the Respondent, who was acting as the Master, failed to provide a safety orientation as called for in 46 C.F.R. 185.506 and, therefore, the First Specification under Violation of Regulation is **proven**.

Under the ~~Second~~ Specification the Respondent was charged with violating 46 CFR 4.05-10 which states in pertinent part that where there is an injury requiring more than first aid medical attention the owner, agent, master or person in charge of the vessel must give notice to the Coast Guard of the casualty and the marine employer must file a written report within 5 days to the nearest OMCI. A marine employer is defined as the owner, managing operator, charterer, agent, master or person in charge of a vessel other than a recreational vessel. 46 C.F.R. §4.03-50. It is clear from the record that the Respondent was acting under his license as the master aboard the LRS RENNIASANCE when the marine casualty occurred. It is also clear from the testimony that the Respondent did not submit a casualty report within the requisite 5 days. Petty Officer Nored testified:

Question: Okay. And is the date - - in response to this letter or as of the date of today, have you received the required 2692 from Mr. Sinn?

Answer: No, I have not. (Transcript at 45)

Therefore, the Second Specification under the Charge of Violation of Regulation is **proven.**

Violation of Law

The last Charge and final Specification fall under Violation of Law in that the Respondent is charged with failing to post his merchant mariner's license in a conspicuous place. Under 46 U.S.C. §7110 each holder of a license issued under that part has 48 hours to post their license in a conspicuous place. Masters are licensed under 46 U.S.C. §7101, therefore, § 7110 applies to the Respondent. The Coast Guard presented sufficient evidence to indicate that the license was not posted in a conspicuous place (Tr. 71) and the Respondent put on no evidence to rebut this. Therefore, the only Specification under Violation of Law is found to be **proven.**

Prior Record

There is no evidence that Respondent has a prior record with the Coast Guard.

Mitigating Evidence

Several items in the record represent evidence of mitigation. First, the Respondent has no prior record with the Coast Guard. Secondly, the Respondent has been in the

business since 1963 (Tr. 206). Finally, the operation of cruise vessels is the Respondents livelihood.

Conclusion

In light of all the circumstances, any one of a variety of sanctions, including a lengthy suspension, might be ordered. The Coast Guard has recommended, however, a sanction of only one (1) month outright suspension to be followed by a sixteen (16) month probationary period in which, if the Respondent is brought up on further charges during that time he would, upon being found liable for the additional offense, automatically receive a four month suspension. Therefore, this court finds after a thorough review of the mitigating factors and careful consideration of the Coast Guard's recommendation, that the proper sanction is one (1) month outright and sixteen (16) months probation.

Order

IT IS ORDERED that the charge of Misconduct and the specification thereunder is **PROVED**, and it is hereby further;

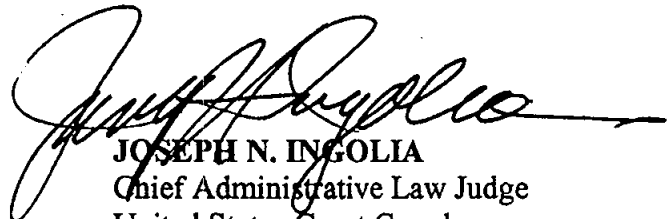
ORDERED that the first and second specification under the Charge of Violation of Regulation are **PROVED**, and it is hereby further;

ORDERED that the first specification under the charge of Violation of Law is **PROVED**, and it is hereby further;

ORDERED that the Respondent's License (# 764165) and all other Coast Guard issued documents and licenses of the Respondent are hereby **SUSPENDED** for a period of one (1) month to begin upon the immediate surrender of the Respondent's Licenses and Documents to the nearest Coast Guard Station, and it is hereby further;

ORDERED that if the Respondent is found liable for any additional offenses within the next (16) sixteen months all of his current Coast Guard issued licenses and documents will be automatically suspended for an additional four (4) months, and it is hereby further;

ORDERED, that the service of this Decision on the Respondent will serve as notice to the Respondent of his right to appeal, the procedure for which is set forth in the document entitled "appeals", attached hereto.



JOSEPH N. INGOLIA
Chief Administrative Law Judge
United States Coast Guard

Dated on the 18th day of July, 1997
Baltimore, Maryland

Copy:
Respondent
MSO Philadelphia
Commandant (G-MAO-1)

EXHIBIT LIST

Coast Guard

- I.O. Exhibit 1 - Application for Renewal of License dated 9/13/95
- I.O. Exhibit 2 - Copy of Merchant Mariner's License
- I.O. Exhibit 3 - Letter Dated 8 May 1997, from J.H. Nored to the Respondent
- I.O. Exhibit 4 - Boarding Report dated 5 May 1997
- I.O. Exhibit 5 - Confirmation of Atlas Cape May Tour Package
- I.O. Exhibit 6 - Copies of checks 7601, 7831, 7988.
- I.O. Exhibit 7 - Receipt from Atlas Inn Beach Resort to Atlas Hanover
- I.O. Exhibit 8 - Copy of Check 06043 and prior invoice to Atlas Inn.

Respondent

- Respondent's 1 - Marine Safety Manual 10-26 "Perm. Moored Vessels"
- Respondent's 2 - Marine Safety Manual 28 "Passengers for hire & consideration"

46 C.F.R. PART 5 SUBPART J APPEALS

5.701 APPEALS IN GENERAL

(a) A respondent against whom a finding of "proved" has been rendered may appeal such decision to the Commandant.

(b) The hearing transcript, together with all papers and exhibits filed, shall constitute the record for decision on appeal. The only matters which will be considered by the Commandant on the appeal are:

- (1) Rulings on motions or objections which were not waived during the proceedings;
- (2) Clear errors on the record;
- (3) Jurisdictional questions.

(c) In the preparation of an appeal, the investigating officer's and the Administrative Law Judge's assistance to the appellant will extend only to the point of providing information as to the applicable regulations.

(d) If the respondent requests a copy of the transcript in the notice of appeal and the hearing was recorded or transcribed at government expense, the transcript will be provided upon payment of the fees prescribed in 49 CFR 7.95. If the services of a government contractor were utilized, the transcript must be obtained under the provisions of 49 CFR 7.99.

5.703 PROCEDURES FOR APPEAL

(a) An appeal may be taken only by filing a written notice of appeal within 30 days after service of the complete written decision. This notice of appeal must be filed with the Administrative Law Judge who heard the case or with any Office in Charge, Marine Inspection for forwarding to the Administrative Law Judge.

(b) The notice of appeal must:

- (1) Be typewritten or written legibly;
- (2) Be addressed to the Commandant; and
- (3) Set forth the name of the appellant, the number and description of the license, certificate and/or document involved, and the name of the Administrative Law Judge who heard the case.

(c) The completed appeal must be submitted to the

Commandant, U.S. Coast Guard (G-MMT), 2100 2nd St., S.W., Washington, D.C. 20593, within sixty days after service of the complete written decision, or if a transcript was requested, within 60 days after receipt of the transcript. After this time has elapsed, anything received will not be considered as a part of the appeal record unless an extension of time has been granted in writing by the Commandant and the extended time limit has been met.

(d) The appeal must contain a brief or memorandum setting forth legal and other authorities relied upon. All grounds for appeal or exceptions to the Administrative Law Judge's decision must be described with particularity.

(e) No appeal will be accepted in the case of a revocation or outright suspension if the respondent has not complied with the order of the Administrative Law Judge to deposit the license or document with the Coast Guard.

5.705 ACTION ON APPEAL

(a) The Commandant may affirm, reverse, alter, or modify the decision of the Administrative Law Judge, or may remand the case for further proceedings. The Decision of the Commandant on Appeal is the final agency action in the absence of a remand.

(b) Failure to file a brief containing grounds and justification for relief sought on appeal of the Administrative Law Judge's decision will result in either:

(1) Termination of the case by written notice to the appellant or appellant's counsel that the decision of the Administrative Law Judge constitutes the final agency action on the merits of the case; or

(2) Consideration of the appeal on the merits of the case and publication of the Commandant's decision without prior notice to the appellant or appellant's counsel. This will only be done when some clear error appears in the record or when the case presents some novel policy consideration.

AN APPEAL MAY BE TAKEN ONLY BY FILING A WRITTEN NOTICE OF APPEAL WITHIN 30 DAYS AFTER SERVICE OF THE COMPLETE WRITTEN DECISION. SEE 46 CFR 5.703.

Certificate of Mailing

I hereby certify that I have this day served the foregoing document(s) upon the following parties and limited participants (or designated representatives) in this proceeding at the address indicated by Facsimile and first class mail.

Ronald G. Sinn
6006 Park Blvd.
Wildwood Creek, N.J. 08246

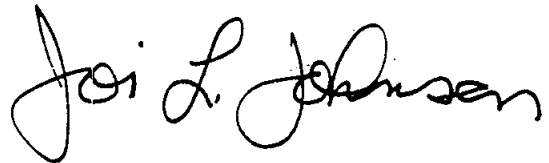
Lt. Mark. Hindle
MSO Philadelphia
One Washington Ave
Philadelphia, PA 19147-4395
Fax - 215 271-4878

I hereby certify that I have this day served the foregoing document(s) upon the following parties and limited participants (or designated representatives) in this proceeding at the address indicated by first class mail only.

- Commander (m)
CCGD5
Federal Building
431 Crawford Street
Portsmouth, VA 23704

Commandant
GMAO-1
2100 Second street
Washington, DC 20593

Dated this 18th day of July, 1997
Baltimore, Maryland



Joi L. Johnson
Legal Assistant to the Chief
Administrative Law Judge